(36)

Supreme Court of the United States

October Term, 1943

No. [redacted] 91

HARRY SITAMORE,
PETITIONER,

VS.

THE STATE OF FLORIDA,
NATHAN MAYO, as State Prison Custodian, and
L. F. CHAPMAN, as Superintendent of the
State Prison at Raiford, Florida.
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA.

SUPPORTING BRIEF

MARTIN CARABALLO
JOHN G. GRAHAM
Attorneys for Petitioner.

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SUPPORTING BRIEF ON PETITION FOR CERTIORARI

The Supreme Court of the State of Florida, the highest court in this State, rendered its judgment on February 1, 1944 (R. 117), clarified its opinion on the 15th day of February, 1944, (R. 118) and denied a rehearing on the 23rd day of February, 1944 (R. 120).

The specific claims advanced before the Supreme Court of the State of Florida, insofar as the same are reviewable by this court, were assigned as errors 1, 2, 3 and 4 (R. 44) and are in the words and figures following:

1. The Court erred in finding that the adjudication of guilty entered by the Judge of the Criminal Court of Record of Dade County, Florida, was not impeachable by *habeas corpus*.

2. That the Court erred in holding that the sentence imposed upon the petitioner by the Judge of the Criminal Court of Record of Dade County, Florida, was not impeachable by *habeas corpus.*

3. The Court erred in failing to hold under the evidence that the petitioner was coerced into pleading guilty to the information filed in the Criminal Court of Record, Dade County, by long and protracted questioning; that he was deprived of the benefit of counsel, and that his plea of guilty was not voluntary, and that it was made under circumstances which rendered the adjudication and sentence void.

4. That the Court erred in refusing to hold that the plea of guilty and the sentence pronounced against the petitioner was in violation of the 14th Amendment to the Federal Constitution as well as of Sections 4 and 11 of the Declarations of Rights of the Constitution of the State of Florida, and was therefore null and void.

The Supreme Court of the State of Florida affirmed the order of the Lower Court remanding the prisoner (R. 117), clarified its opinion (R. 118) and denied a rehearing (R. 120).

Jurisdiction to review this cause is found in Section 237 of the Judicial Code as amended (Title 28 U.S.C.A., Section 344).

HISTORY OF CASE

On the 2nd day of April, 1943, the petitioner, Harry Sitamore, an inmate of the State prison at Raiford presented to the Supreme Court of the State of Florida a petition for writ of *habeas corpus.* (R. 1). This petition not only included the record of the court by which he was sentenced, attached as exhibits thereto, but also set forth facts which were in effect as follows:

That petitioner had been arrested without a warrant, confined in jail for eight days before being taken before a Magistrate, during which period he had been subjected to a constant grilling by the officers of the law. That he was denied the right to counsel and after eight additional days of grilling was finally induced by the officers of the law, including the prosecuting attorney, to withdraw his plea of not guilty to a charge of breaking and entering entered when arraigned, to a plea of guilty on the promise of the officers that his sentence would not exceed five years which is the maximum sentence for grand larceny. That he was assured by said officers that the Judge of the Criminal Court had agreed that if he would cause the return of the stolen property and would enter a plea of guilty, he would impose such mitigated sentence.

That the petitioner was not skilled in the law and was without the advice of counsel, and relying on said promises and assurances, did withdraw his plea of not guilty and entered a plea of guilty whereupon the court in violation of the agreement sentenced him to a total of forty years imprisonment.

WRIT OF HABEAS CORPUS

On the filing of the petition the said Supreme Court on the 2nd day of April, 1943, issued its writ referring the matter to Judge Barns, a Circuit Judge in said State, for the hearing and adjudication. (R. 26).

SUMMARY OF EVIDENCE

On the hearing before Judge Barns, evidence was presented on behalf of the petitioner fully supporting all of the facts alleged in the petition. (R. 52 to 99).

In addition, testimony was offered that the Judge of the Criminal Court who sentenced the petitioner had knowledge of the agreement under which the petitioner plead guilty, and had consented to a mitigated sentence. (R. 84, 90). Proof was also offered showing the Judge of the Criminal Court was dishonest and corrupt; (R. 95) had been in the habit of imposing sentences in criminal cases and setting same aside at the close of term. (R. 99) That said Judge was later arrested and tried for bribery and corruption and malfeasance and was caused to resign his office and forfeit right to practice law in Florida. (R. 95-97). That petitioner was warned not to employ counsel and threatened with punishment if he did. (R. 59). That at the time of his plea and sentence petitioner was without counsel and Judge Collins, the judge of the trial court, though announcing the prisoner was entitled to a mitigated sentence, stated that because of the publicity given the case he had to give him the limit of the law. (R. 61). It was also established by the testimony of the petitioner that after the sentence was pronounced on him an emissary of Judge Collins came to him seeking $15,000.00 later reduced to $7500, for a commutation of the sentence. (R. 61-62). The significance of this evidence lies in the fact that Judge Collins, who testified by depositions taken *after* that evidence had been introduced, did not deny such state of facts nor even comment on it.

ORDER OF LOWER COURT

The Circuit Court at the conclusion of the *habeas corpus* hearing, in its order remanding the prisoner, in effect found; that the prisoner was led to believe that he would be dealt with more considerately than he was but that the judgment and sentence could not be review-

ed in *habeas corpus* proceedings but depended on the trial court and Supreme Court for relief in proceedings other than *habeas corpus*, "if any are available". (R. 42-43).

QUESTIONS PRESENTED

I.

Where in arrest, prosecution and sentencing of a man his rights under the 5th, 6th and 14th Amendments to the Constitution of the United States have been violated by the officials and court sentencing him to a term of years in the State Prison of the State of Florida, may the Supreme Court of said State deny to such a person the right to a review of such sentence on the theory that the same can not be reviewed under the known forms of procedure in said State?

II.

Where on a petition for writ of *habeas corpus* filed with the Supreme Court of the State of Florida the facts alleged show a violation of the petitioner's rights under the 5th, 6th and 14th Amendments to the Constitution of the United States and the judge before whom the writ of *habeas corpus* was made returnable refused to consider facts *dehors* the record on the theory that such could not be done under the recognized procedure in said State, should the Supreme Court of said State, on affirming the said ruling, have granted the motion of petitioner for a writ of error *coram nobis* on such facts?

ARGUMENT

A plea of guilty as result of deception or misconduct of State officers renders Judgment and sentence illegal under Federal Court decisions.

By Amendments 6 and 14 of the Federal Constitution it is provided in effect that all persons charged with a criminal violation are entitled to the advice of counsel and shall not be deprived of life, liberty or property without due process of law.

Under these sections the Supreme Court of the United States has uniformly held that where a person unskilled in the law and charged with a crime is denied the right of counsel or has been induced through deception of the officers of the law to enter a plea of guilty to a criminal charge, or his confession or plea of guilty is brought about by questioning or grilling before he is taken before a Magistrate, his constitutional rights *to due process of law* have been violated and his imprisonment is illegal.

Widener vs *Johnston,* 136 Fed. 2nd 416;

Walker vs *Johnston,* 312 U. S. 275-85 L. Ed. 830;

Smith vs *Brady,* 312 U. S. 329-85 L. Ed. 859;

Waley vs *Johnston,* 316 U. S. 101-86 L. Ed. 1302;

McNabb vs *U. S.,* 318 U. S. 332-87 L. Ed.;

Anderson vs *Johnston,* 318 U. S. 350-87 L. Ed.

In the Widener case, supra, the rule as set forth in the first headnote is as follows:

> "Where prisoner's constitutional right to "assistance of counsel" has been violated or his plea of guilty has been coerced or induced by decep-

tion of government officials, it is District Court's duty to order prisoner's release on write of habeas corpus."

In the *Waley* vs *Johnston* case, supra, the Supreme Court of the United States states:

> "A conviction on a plea of guilty coerced by a federal law enforcement officer is not consistent with due process of the law."

Right of Defendant to be represented by Counsel and effect of a denial.

In the case of *Johnson* vs *Zerbst,* 304 U. S. 458, the Federal Supreme Court, speaking through Mr. Justice Black, said ,

> "The Constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused — whose life or liberty is at stake—is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear upon the record. * * * * * The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution."

Furthermore, the right to the assistance of counsel exists at the time of arraignment as well as at the trial. This was pointed out by Mr. Justice Stephens in *Evans* v. *Rives,* 126 F. (2d) 633, a case decided by the United

States Court of Appeals for the District of Columbia, in 1942. There the court said:

> "Loss of life or liberty is as certain through sentence upon a plea of guilty through sentence upon the verdict of a jury. The importance to an accused of the assistance of counsel in the event of a plea of not guilty and trial is patent. It is equally important to an accused, in determing in what manner he may properly meet a charge and before a decision as to the nature of his plea, to have the advice of counsel concerning, for example, the insufficiency of the indictment, the possible existence of a defense or bar under facts known to the accused but the legal import of which he may not know, the nature of the penalty provided for the offense charged, and the probably extent to which it will be imposed, under the facts involved, in the event of a plea of guilty."

Under decisions of Federal Courts, including Supreme Court, Habeas Corpus is the proper remedy to test legality of conviction.

Under Federal Statutes it is in effect provided (Title 28 U.S.C.A., Sections 460-461) that under a writ of *habeas corpus* the court hearing the matter has the power to take evidence, inquire into the facts and determine the legality of the conviction as right and justice demand.

Under this provision, Federal courts have in many recent cases held that evidence of facts *dehors* the record are admissible on the hearing in *habeas corpus* and if the facts show that the prisoner's right under the constitution have been violated the judgment and sentence are *illegal* and *void* and he should be discharged from imprisonment.

See above citations.

In the *Waley* vs *Johnston* case, supra,the rule is laid down as follows:

> "True, petitioner's allegations in the circumstances of this case may tax credulity. But in view of their specific nature, their lack of any necessary relation to the other threats alleged, and the failure of respondent to deny them specifically, we cannot say that the issue was not one calling for a hearing within the principles laid down in Walker v. Johnston, supra. If the allegations are found to be true, petitioner's constitutional rights were infringed. For a conviction on a plea of guilty coerced by a federal law enforcement officer is no more consistent with due process than a conviction supported by a coerced confession. Bram v. United States, 168 U.S. 532, 543, 18 S. Ct. 183, 187, 42 L. Ed. 568; Chambers v. Florida, 309 U. S. 227, 60 S. Ct. 472, 84 L. Ed. 716. And if his plea was so coerced as to deprive it of validity to support the conviction, the coercion likewise deprived it of validity as a waiver of his right to assail the conviction. Johnson v. Zerbst, 304 U. S. 458, 467, 58 S. Ct. 1019, 1024, 82 L. Ed. 1461.
>
> The issue here was appropriately raised by the habeas corpus petition. The facts relied on are dehors the record and their effect on the judgment was not open to consideration and review on appeal. In such circumstances the use of the writ in the federal courts to test the constitutional validity of a conviction for crime is not restricted to those cases where the judgment of conviction is void for want of jurisdiction of the trial court to render it. It extends also to those exceptional cases where the conviction has been in disregard of the constitutional rights of the accused, and where the writ is the only effective means of preserving his rights. Moore v. Dempsey, 261 U. S. 86, 43 S. Ct. 265, 67 L. Ed. 543; Mooney v. Holohan, 284 U. S. 103, 55 S. Ct. 340, 79 L. Ed. 791, 98 A.L.R. 406; Bowen v. Johnston, 306 U. S. 19, 24, 59 S. Ct. 442, 444, 83 L. Ed. 455."

That Sitamore was coerced and intimidated and subjected to protracted grilling can not be denied. When arrested at his home without a warrant at 4:30 A. M. by ten or eleven policemen and detectives he was hit on the head with a club (R. 54). That he was questioned for several days both at night and in the daytime and deprived of his sleep. (R. 55). Chief of Police Teaney, one of the witnesses for the respondents, confirms most of this in his deposition in his answer to the fifth interrogatory (R. 102-103) where he said:

> "I do remember we had him in Chief of Police office which was my office several times for questioning; we took turns about examining, sometime I would do it and others Mayor Katzentine, and Sgt. Eugene E. Bryant would do the questioning; there was also present several detectives; Briefly the questioning by me and others *present* was along the line of determining the guilt of Sitamore and the location of the stolen jewelry, we being anxious to find the jewelry; *after a long tedious grilling* he told me and the others where to look for the jewelry, etc". (Italics ours).

Respondent's witness Katzentine, who was Mayor of Miami Beach at the time, also gives the names of most of those present at these questionings (R. 106), and stated that notes were taken of the grilling. (R. 106) Significantly these notes which would show the continuous grilling and whether or not a mitigated sentence was promised have not been produced to dispute the evidence of the petitioner and his witnesses. It would seem to us that if the denials of the respondent's witnesses had been backed by the stenographic report, instead of by admittedly dim recollections, the respondents might have made a better case. That these notes were made as testified to by petitioner is admitted by Katzentine (R. 106). The failure to produce them is unexplained.

In the McNabb case, supra, grilling of one defendant for two hours before arraignment was considered illegal. In the more recent Ashcraft case, not yet reported, 36 hours was frowned upon. In this instant case the grilling continued from the time of the arrest on the 16th day of March until the petitioner was worn down and plead guilty on April the 1st, a total of sixteen days.

It can not be argued that these Federal cases stand on a different footing than the case at bar because there the provisions of the Federal Constitution were being studied in Federal Courts, since the Supreme Court of the State of Florida, by the law of the land and by its own pronouncement, is bound to give effect and validity to the Federal Constitution in all cases pending befort it.

Not only is the above true but a comparison of the Federal Statutes on the subject with the Florida Statutes will show that the Federal Statutes (18 U.S.C.A. Section 595) require that the defendant be taken before the nearest United States Commissioner or the nearest judicial officer having jurisdiction, while the Florida Statutes (Section 901.23, Florida Statutes 1941) requires that the arrested person shall be taken without unnecessary delay before the nearest accessible magistrate in the county in which the arrest occurs, having jurisdiction, and there make complaint, etc. It would seem to us that the imperative necessity of the immediate production of the accused before a magistrate is more stringent under the Florida law than under the Federal Statutes. Certainly it is true that if a failure to comply with the Federal Statutes renders the plea of guilty illegal the same would be true under the Florida Statute, but with even more force.

The Judgment and Sentence was also in violation of the Constitution of the State of Florida.

The Constitution of the State of Florida, Sections 11 and 12 of the Bill of Rights, follows the Federal constitution in that it provides, in effect, that any person charged with a crime is entitled to counsel of his own choice and is not to be deprived of life, liberty or property without due process of law, and courts of this state have also held that a plea of guilty to a criminal charge, made without the advice of counsel, must be understandingly made by a competent person and without any coercion or promise or deception of the officers of the law.

Nickles vs *State,* 99 So. 121-86 Fla. 208;

Brown vs *State,* 109 So. 627, 92 Fla. 592;

Casey vs *State,* 156 So. 282, 116 Fla. 3;

House vs *State,* 177 So. 705, 130 Fla. 400;

Eckles vs *State,* 180 So. 764, 132 Fla. 526;

Artigas vs *State,* 192 So. 795, 140 Fla. 671.

The rule laid down in the Artigas case, supra, Page 796, is as follows:

> "The law controlling the case at bar is well settled in Florida. The rule or doctrine previously enunciated by this court is that a plea of guilty when entered should be entirely voluntary by one competent to know the consequences of such a plea and the entering of a plea of guilty should not be induced by fear, misapprehension, persuasion, promises, inadvertence or ignorance. See Pope v. State, 56 Fla. 81; 47 So. 487; 16 Ann. Cas. 972; Britton v. State, 68 Fla. 438, 67 So. 142; Clay v. State, 82 Fla. 83, 89 So. 353; Nickles v. State, 86 Fla. 208, 98 So. 497, 502, 99 So. 121;

Brown v. State, 92 Fla. 595, 109 So. 627; Sinclair v. State, 133 Fla. 77, 182 So. 637."

Florida's Statute regulating use of Writ of Habeas Corpus is practically identical with the Federal Court procedure.

In Florida, also, as in Federal courts, Sections 79.06 and 79.08 Florida Statutes, 1941, which govern the use of writ of *habeas corpus* provide, in effect, that the return made to a writ shall not be taken to be conclusive as to the facts stated therein but it shall be competent for the court, justice or judge, before whom such return is made to examine into the cause of the imprisonment or detention, *to receive evidence in contradiction of the return,* and to determine the same as the very truth of the case shall require. And the court, justice or judge before whom the prisoner shall be brought shall either discharge him, admit him to bail or remand him to custody, as the *law* and the *evidence* shall require.

Habeas Corpus proceedings proper and only remedy in view of the facts in the Case at Bar.

In view of the similarity of the provisions of State and Federal constitutions, as well as the procedure under writs of *habeas corpus,* counsel for petitioner contend that the State court should have followed the decisions of the United States Supreme Court in its construction of the use of the writ of *habeas corpus* to remedy violations of rights assured to persons charged with crime by the constitutions of both Federal and State governments.

Not only is the above true but the Florida Supreme Court has recognized that where a man's constitutional

rights have been violated through the action of state agents a conviction brought about thereby is null and void and may be collaterally attacked under a writ of *habeas corpus.*

Skipper v. *Schumacher*, 169 So. 58-124 Fla. 384.

In the Schumacher case above cited, the petitioner sought relief from imprisonment on the ground of misconduct of certain members of the grand jury intimidating witnesses as to their testimony. Though the Supreme Court held that the grand jury acted only as a body and not as individuals and the individual members did not represent the state and therefore denied the writ, the court in its opinion clearly recognized that if the conviction had been secured through a violation of the due process clause as the result of action of state officials, *habeas corpus* would have been the proper remedy as is shown by the following headnotes; from 169 So. 58:

> "Prosecuting attorney is "agent" of state as respects whether his action is state action within amendment to Federal Constitution prohibiting state from depriving any person of life, liberty, or property without due process of law."
>
> "Judgment of conviction, knowingly obtained by prosecuting attorney's conscious and deliberate use of perjured testimony is *null* and *void* under Fourteenth Amendment to Federal Constitution."
>
> "Habeas corpus is proper remedy where one is restrained of his liberty under void judgment, since such judgment can be attacked colatterally."

Writ of Coram Nobis not available to Petitioner under the peculiar facts of this Case.

Since this court has held in the case of *Hysler* vs. *State of Florida,* 315 U. S. 411-62 S. Ct. Rep. 688 that Florida's answer to a problem such as we have here is the writ *coram nobis* we believe it is pertinent to show in this brief that such a writ is not available to the petitioner.

The function of a writ of *coram nobis* as laid down by the decisions of the Supreme Court of the State of Florida is to bring the attention of the court to facts then existing and not shown by the record *nor known by the court or party or counsel* at trial and being of such vital nature that if known in time would have prevented the rendition and entry of the judgment assailed.

Nickels vs. *State,* 99 So. 121 86 Fla. 208;
Lamb vs *State,* 107 So. 535, 91 Fla. 396;
Chambers vs. *State,* 158 So. 153-154, 115 Fla. 510.

In the Lamb case, supra, the rule as laid down in headnote 12 is as follows:

> "The function of a writ of error coram nobis is to bring the attention of the court to a specific fact or facts then existing but not shown by the record and not known by the court or by the party or counsel at the trial, and being of such vital nature that if known to the court in time would have prevented the rendition and entry of the judgment assailed."

The inference to be drawn on the functions of a writ of *coram nobis* as indicated by the above citations is that the law presumes all presiding judges to be honest and upright and conscious of the fact that they are

charged with the duty, not only of enforcing laws intended for the protection of the public, but also to see that the prisoner's right under the constitution are fully protected. That if the judge who tried and sentenced the prisoner had knowledge that the prisoner's rights under the constitution had been violated he would not have adjudicated the prisoner guilty nor sentenced him to imprisonment until all rights of the prisoner had been fully protected.

In the case at bar the petition as well as the proof clearly showed that the judge by whom the prisoner was sentenced was not an honest and upright judge; that instead of protecting the rights of the prisoner, which he knew had been violated, he chose to disregard all his constitutional rights and proceeded to enter his judgment and sentence in violation of the agreement made by himself and his officers.

It is also significant that Judge Collin's record on cases of defendants brought before him charged with breaking and entering, as shown by Exhibit No. 1, (R. 74-a), show that his sentences, excluding Sitamore's, averaged between four and five years, a number of such cases having had their sentences suspended. (Sitamore's accomplice was sentenced to only five years.) This exhibit covers all such cases occuring in the same year in which Sitamore was sentenced and are not selected cases. One is led to the inevitable conclusion that the severity of this sentence was deliberate and as a basis for a later commutation or suspension for a consideration. Such conduct on the part of a member of the judiciary deserves the severest condemnation and the existence of such motives render his sentence odious and abhorent. That Sitamore stole part of the jewelry and received part from others does not make him guilty of

breaking and entering and any sentence of more than five years is excessive, arbitrary and capricious.

Anyone reading this record and noticing the remarks of Judge Barns during the trial and reading his opinion in the remanding order (R. 42) can not fail but come to the conclusion that Judge Barns believed the testimony of the petitioner. That he believed the petitioner's rights under the Constitution had been trampled on and that were it not for the fact that it was his opinion that *coram nobis* was the proper remedy in this case that he would have granted the petition and discharged the petitioner.

A CHALLENGE TO JUSTICE

Human experience teaches us that if there should ever be a breakdown in our democratic institutions, or if the rights of the individual guaranteed by the Bill of Rights become a dead letter, that this is not likely to occur through alien force of arms, nor by any one other sudden stroke, but by an insidious process whereby the rights of the lowly or the accused are first denied and from this stepping stone as a precedent the abuse of these rights will spread in waves which reach ever further and ever higher until no rights remain in any one, and there will emerge concentrated and autocratic power in the hands of the strongest.

In this case we believe we have demonstrated that the petitioner's rights under the Federal and State Constitutions have been denied to him. We also have shown that under prior decisions of the highest Florida Court the writ of *coram nobis* will not lie, and since the fundamental rights to life, liberty and the pursuit of happiness may not be infringed upon except by due process

of law it would appear to us that a writ of *habeas corpus* is the proper remedy in this case.

Is the decision of the Supreme Court of Florida an adjudication on the merits?

In the clarification opinion of February 15, 1944 the Supreme Court of Florida used this language (R. 117),

> "In response to appellant's petition for clarification of our judgment in this case, for the information of appellant and his counsel we might state that, while some members of the Court were in some doubt as to whether habeas corpus, or a bill in equity to impeach the judgments and sentences under which appellant is held in custody for fraud in their procurement, was the appropriate remedy for appellant to have pursued in this case (see Skipper vs Schumacher, 124 Fla. 384, 169 So. 58), the court, in rendering its judgment of affirmance, considered and decided the appeal on the merits. The testimony on the vital issues presented was in conflict, but there being in our opinion ample evidence to support the judgment entered by the Circuit Judge, who was in a better position than the members of this Court to determine the credibility of the testimony, we entered a judgment of affirmance, in accordance with our established rule governing such cases."

By referring to the order of the Circuit Judge which our Supreme Court affirmed it is apparent that the Supreme Court of Florida was in error in assuming that the issues had been decided on the merits. This is easily demonstrated by referring to the order of the Circuit Judge (R. 42) which in part is as follows:

> "Upon the record and evidence adduced the questions are:

(1) *Is the adjudication of guilty* impeachable by *habeas corpus,* and (2) Is the *sentence* impeachable by *habeas corpus.*

It is my conclusion neither are impeachable by *habeas corpus* proceedings and particularly so after the lapse of so long a time." * * * * * *

Based upon this apparent misconception of the decision of the Circuit Judge we applied for a rehearing (R. 119) which rehearing was denied. (R. 120).

CONCLUSION

We respectfully submit that since *coram nobis* is not available to petitioner that the Florida courts should have considered the merits in the *habeas corpus* proceedings and, having failed to do so, the petitioner has been denied the protection of the laws of the United States.

We believe further that, even if it be deemed that the Florida courts have passed on the merits, yet they have decided these questions adversely to the decisions of the Supreme Court of the United States on substantially similar facts.

Respectfully submitted.

MARTIN CARABALLO

JOHN G. GRAHAM
Attorneys for Petitioner.